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September 4, 2024

VIA ECF

MEMO ENDORSED

The Hon. Jessica G. L. Clarke
United States District Court
Southern District of New York
500 Pearl Street, Room 1040
New York, NY 10007

Re: *Rapaport v. Iyer, et al.*, No. 1:23-cv-6709 (S.D.N.Y.)

Dear Judge Clarke:

We represent Defendant Richard Epstein in the above-captioned action and write jointly with counsel for Defendants Ajay Srinivasan Iyer and Zachary George Garrett in response to Plaintiff Gideon Rapaport's ("Plaintiff") August 22, 2024 letter notifying the Court that he intends to "amend its [sic] complaint as of right" and file a Second Amended Complaint by September 9, 2024. *See* Dkt. No. 55.

Plaintiff's letter misapprehends both Your Honor's Individual Rules and Practices in Civil Cases and Federal Rule of Civil Procedure 15. Initially, Plaintiff has *already* amended his complaint once as of right under Rule 15, having filed his First Amended Complaint on May 24, 2024. *See* Dkt. No. 38. Neither the Federal Rules of Civil Procedure nor Your Honor's Individual Rules and Practices afford plaintiffs multiple amendments as of right. To the contrary, Your Honor's Rule 4(e) – the rule that governs amendment following the filing of a motion to dismiss – states explicitly that "[t]his provision does not alter the requirement to seek leave of the Court to file amended pleadings not as of right pursuant to Federal Rule of Civil Procedure 15." Therefore, the procedures outlined in Your Honor's Rule 4(e) do not apply absent Plaintiff's independent compliance with Rule 15(a)(2), which requires Plaintiff to seek consent of all parties or request leave of the Court to file his proposed Second Amended Complaint. He has done neither.

Accordingly, Plaintiff's August 22 letter is defective on its face and should be rejected by the Court. As Plaintiff's deadline to file an opposition to all Defendants' motions has passed, Defendants are willing to consent to one additional week for Plaintiff to oppose their motions, although they do not consent to additional time to file an amended pleading. Should Plaintiff nevertheless file a motion for leave to amend pursuant to Rule 15(a)(2) and Your Honor's Rule 1(e), Defendants respectfully request the opportunity to oppose such request as futile, untimely, and prejudicial.

We thank the Court for its consideration of this matter.

Respectfully Submitted,

Davis Wright Tremaine LLP

/s/ Jeremy Chase
Jeremy Chase

cc: All Counsel of Record via ECF

Pursuant to Federal Rule of Civil Procedure 15, Plaintiff is required to seek leave of court to file a Second Amended Complaint, but has not done so. It appears more efficient to the Court, particularly because futility is one of the grounds on which Defendants seek to oppose the Second Amended Complaint, for the parties to confer further about this issue. The parties are therefore directed to confer regarding whether they consent for Plaintiff to file a Second Amended Complaint and for Defendants thereafter to brief renewed motions to dismiss. If the parties consent, they are directed to file a joint letter to that effect by **September 13, 2024**. If the parties cannot agree to such an approach, the Court sets the following briefing schedule:

- Plaintiff's motion for leave to amend and opposition to Defendants' motions to dismiss: **September 19, 2024**.
- Defendants' opposition to Plaintiff's motion for leave to amend and reply in support of Defendants' motions to dismiss: **October 3, 2024**.
- Plaintiff's reply in support of Plaintiff's motion for leave to amend: **October 10, 2024**.

The Clerk of Court is directed to terminate ECF No. 57.

SO ORDERED.



JESSICA G. L. CLARKE
United States District Judge

Dated: September 5, 2024
New York, New York